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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,282	04/10/2001	Kelly Olsen	10209.123	8316
21999 7590 11/07/2008 KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111				
EXAMINER				
LASTRA, DANIEL				
ART UNIT		PAPER NUMBER		
3688				
MAIL DATE		DELIVERY MODE		
11/07/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/832,282

Applicant(s)

OLSEN ET AL.

Examiner

DANIEL LASTRA

Art Unit

3688

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-25 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16, 18-25 and 27-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Claims 1-16, 18-25 and 27-29 have been examined. Application 09/832,282 (METHOD FOR UNILEVEL MARKETING) has a filing date 04/10/2001.

Response to Amendment

2. In response to Final Rejection filed 06/02/2008, the Applicant filed an RCE on 09/04/2008.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16, 18-25 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sash (US 2005/0075925) in view of Reber (US 2002/0129121).

As per claim 1, Sash teaches:

A method of unilevel marketing and distribution comprising the steps of:

using a computer to receive a reference for a specific potential customer from a sales representative, the reference being initiated by said sales representative who is known by said potential customer (see figure 27c) and received by a seller (see figure 27c), wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative (see figures 27b, 27c);

personalizing the promotional materials for distribution to said potential customer, wherein personalizing the promotional materials comprises the step of modifying promotional materials to include said personalized message and means for identifying said sales representative (see figure 27c; paragraphs 129-131);

distributing said promotional materials directly to the said potential customers from a distributor (see figure 27b; "producthawk.com");

if the potential customer purchases from said promotional materials, using a computer to:

receive a purchase orders from said potential customer and identifies said sales representative (see paragraph 129);

Sash does not expressly teach preparing promotional materials for mass distribution; where said order is received by said distributor, receive payment for said order and distribute a portion of said received payment as a commission to said sales representative. However, Reber teaches a system where promotional materials are mass distributes to potential customers and where said system identifies sale agents that target said promotional materials to said potential customers in order to compensate said sales agents when said potential customers purchase items from said promotional materials (see paragraphs 27-32). Reber also teaches providing said orders to distributors (see paragraph 32), receiving payment from said orders (see paragraph 27) and compensating sales agents based upon sales figure of said purchase (e.g. once a specific sales amount has been attained) (see paragraph 36). Therefore, it would have been obvious to a person of ordinary skill in the art at the time

the application was made, to know that Sash would mass distribute personalize promotional materials to potential customers and would compensate the sales agents that target said promotional materials to said potential customers, as taught by Reber in order to compensate said sales agents for contacting potential customers.

As per claim 16, Sash teaches:

A method for selling product through direct promotion and direct distribution to a customer, the method comprising the steps of:

using a computer to receive referral from a sales representative over the Internet for a specific potential customer, the referral being initiated by said sales representative entering information into a webpage (see figure 27b,c), wherein said referral includes a message that is personalized specifically to said customer from said sales representative, who is known by said customer (see figures 27b,c);

personalizing the promotional materials for said customer, wherein personalizing said promotional materials comprises the step of modifying the promotional materials to include said personalized message and an identifier of said sales representative (see paragraphs 129-131);

sending said promotional materials to said customer from a distributor (see figure 27c);

if said customer purchases from said promotional materials, using a computer to:
receive a purchase order from said customer, said purchase order containing said identifier of said sales representative (see paragraph 129);

Sash does not expressly teach preparing promotional materials for mass distribution; receive payment for said order from said customer; wherein the payment is received by an entity selected from a list consisting of the distributor and a seller and provide a portion of said payment to said sales representative as a commission for said purchase. However, the same argument made in claim 1 regarding this missing limitation is also made in claim 16.

As per claims 2, Sash teaches:

wherein the reference received from the sales representative is received over the Internet using a web page accessed by the sales representative (see paragraph 27c).

As per claims 3 and 18, Sash teaches:

wherein said means for identifying the sales representative is an identification number (see paragraph 129).

As per claim 4, Sash teaches:

wherein said means for identifying provides said distributor with preferred options for distributing said portion of said received payment to the sales representative (see paragraph 129).

As per claims 5 and 19, Sash teaches:

wherein said reference is received over the Internet (see figure 27c).

As per claims 6 and 20, Sash teaches:

wherein said reference is received via E-mail (see figure 27c).

As per claims 7 and 21, Sash teaches:

wherein said promotional material are received via a telephone (see paragraph 128).

As per claims 8 and 22, Sash fails to teach:

wherein the promotional materials are in an audio form. However. Official notice is taken that it is old and well known in the computer art to use video and/or audio when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sash would send audio promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claim 9, Sash teaches:

wherein the promotional materials are in printed form (see paragraph 128).

As per claims 10 and 24, Sash fails to teach:

wherein the promotional materials are in a video presentation format. However. Official notice is taken that it is old and well known in the computer art to use video when transmitting advertisements and promotions to users via the Internet. It would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sash would send video promotions to users via the Internet, as said promotions would provide a better multimedia experience to said users.

As per claims 11 and 25, Sash teaches:

wherein the reference provided by the sales representative includes the customer's age, interests, income level, or household (see figure 8 "household").

As per claim 12, Sash teaches:

wherein the reference is received by a distributor was input by the sales representative at a website (see figures 27a-c).

As per claims 13 and 27, Sash teaches:

wherein the reference received from the sales representative is stored in a customer database (see paragraph 129).

As per claims 14 and 28, Sash teaches:

wherein the promotional materials are transmitted to the customer over the Internet in the form of electronic mail (see figure 27c).

As per claims 15 and 29, Sash teaches:

wherein the customer purchases over the Internet (see figure 28b).

Response to Arguments

4. Applicant's arguments filed 09/04/2008 have been fully considered but they are not persuasive. The Applicant argues that Sash in view of Reber fails to teach preparing then personalizing promotional materials for mass distribution, distributing the personalized materials directly from the distributor (not the sale representative) to a potential customer who is personally known by the sales representative, receiving payment for said order and the distribution of a portion of said received payment as a commission to said sales representative. The Examiner answers that in Sash, the sales representative prepares the personalize message but it is the service provider (i.e. addresshawk.com) that distributes the promotional material to potential customers (see paragraph 128) and Reber teaches a system where promotional materials are mass distributes to potential customers and where said system identifies sale agents that

target said promotional materials to said potential customers in order to compensate said sales agents when said potential customers purchase items from said promotional materials (see paragraphs 27-32). Reber also teaches providing said orders to distributors (see paragraph 32), receiving payment from said orders (see paragraph 27) and compensating sales agents based upon sales figure of said purchase (e.g. once a specific sales amount has been attained) (see paragraph 36). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Sash would mass distribute personalize promotional materials to potential customers and would compensate the sales agents that target said promotional materials to said potential customers, as taught by Reber in order to compensate said sales agents for contacting potential customers.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 571-272-6720 and fax 571-273-6720. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James W. Myhre can be reached on (571)272-6722. The official Fax number is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/DANIEL LASTRA/
Examiner, Art Unit 3688
November 4, 2008